

87
88

HIGH COURT OF CHHATTISGARH: BILASPUR
S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J
MISCELLANEOUS APPEAL NO. 1196/2005

Appellants :
(Plaintiffs)

- 1) Mahendra Jain,
aged 58 years,
s/o. late Shri Sewaram
Jain.
- 2) Sanat Jain,
aged 50 years, s/o. late
Shri Sewaram Jain.
- 3) Ashok Jain,
aged 46 years, s/o. late
Shri Sewaram Jain,
- 4) Anil Jain, aged 44 years
s/o. late Shri Sewaram
Jain.

All are r/o. Banjari
road, Raipur, Tahsil &
Dist. Raipur (CG).

Vs.

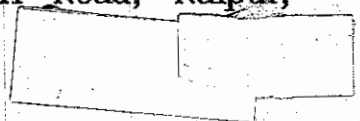
Respondents:
Defendants

- 1) Smt. Sushila Tiwari,
wd/o. Late Shri
Narendra Tiwari,
- 2) Suresh, s/o late
Shri Narendra Tiwari.
- 3) Rakesh,
s/o. late Shri Narendra
Tiwari.

All r/o. House No.2-E,
Rohini Puram, behind
Ayurvedic College,
Raipur, CG.

- 4) Chandra Shekhar,
s/o. Shri Hari Prasad
Tiwari, r/o. Santosh
Bhawan, Sadar Bazar,
Raipur, CG.
 - 5) Ajay, s/o. late Shri
Biharilal Mishra,
r/o. Byron Bazar,
Fawara Chowk,
Raipur, CG.
-

- 6) Sunand Vishwas,
aged 36 years,
s/o. Shri Satya
Vishwas, r/o. Ravi
Nagar, Raipur, CG.
- 7) Ajay Jain,
aged 42 years,
s/o. Shri Suresh
Chandra Jain, r/o.
Tagore Nagar, Raipur,
CG.
- 8) Rafeek Sethi,
aged 59 years, s/o. Shri
Abdul Sattar, r/o.
Khetan Garage,
Moudhapara, Raipur,
CG.
- 9) Ashok Kumar, s/o.
Jhamandas Choithwani,
at Gopal Jewellers,
Banjari Road, Raipur,
CG.
- 10) Shyamlal, s/o. late Shri
Lekhraj Choithwani, at
Gopal Jewellery, Banjari
Road, Raipur, CG.
- 11) Anil Kumar, s/o. late
Shri Lekhraj
Choithwani, Banjari
Road, Raipur, CG.
- 12) Prabhuram Sahu,
aged 66 years, s/o. Ram
Singh Sahu,
r/o. House No.46/298,
Banjari Road, Raipur,
CG.
- 13) Pannalal Sahu,
aged 46 years,
s/o. Goverdhan Sahu,
r/o. House No.46/298,
Banjari Road, Raipur,
CG.



87
90**PRESENT:**

Shri Bhishma Kinger, Counsel for the appellants.
Shri Kishore Bhaduri, Counsel for the respondents No. 1 to 5 on Caveat.
None for respondents No. 6 to 13.

ORDER

(Passed on 17th October, 2005)

Heard on admission.

2) This appeal under Order 43 Rule 1 of the Code of Civil Procedure, is directed against the order dated 15/04/2005 passed by XIth Additional District Judge (F.T.C) Raipur, in Civil Suit No. 92-A/04 whereby the application filed by the appellants/plaintiffs under Order 39, Rules 1 and 2 of the C.P.C., for grant of interim injunction has been dismissed.

3) The case of the appellants/plaintiffs is that on 24/07/2002 respondents No. 1 to 3, who are the owners of old House No.46/298 situated at Banjari Temple Road, Raipur, floor area approx. 2275 sq.ft., executed an agreement to sell in favour of respondents No. 4 and 5 for Rs.5,00,000/- (Rupees Five lakhs). On 06/08/2002 respondents No. 4 and 5 executed an agreement to sell the said property in favour of respondents No. 6 to 8 @ Rs. 2,100.00 per sq. ft. and received Rs.8,00,000/- (Rupees Eight lakhs) as an earnest money. On 12/09/2002 respondents No. 6 to 8 executed an agreement to sell the said property in favour of the appellants/plaintiffs @ Rs.2,200/- per sq. ft., but respondents No. 1 to 8 started evading execution of registered sale deed in favour of the appellants/plaintiffs although the latter were always ready to perform their part of the contract. Afterwards,

20
91

respondents No. 1 to 13 have colluded *inter se* to defraud the appellants/plaintiffs, therefore, the appellants/plaintiffs filed a suit for specific performance of the contract and perpetual injunction and for interim relief also filed an application under Order 39 Rules 1 and 2 of the C.P.C., for temporary injunction against the respondents. Respondents No.6, 8, 12 and 13 remained ex parte, rest of the respondents have opposed the application.

4) Learned Court below after due consideration of all the facts and documents held that possession over the suit property has not been given to vendor by the seller and also registered sale deed in conformity with agreement to sell has not been executed, therefore, no prima facie case has been established in favour of the appellants, also held that principle of balance of convenience and irreparable loss does not lie in their favour, hence rejected the application by the impugned order.

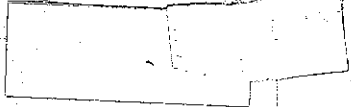
5) Admittedly, the suit property is not in possession of the appellants/plaintiffs. Even for purchase of the suit property appellants/plaintiffs have not entered into an agreement with real owners who are respondents No.1 to 3. Respondents No. 9, 10 and 11 who have filed their written statements before lower Court have specifically raised that respondents No. 4 and 5 did not pay the earnest money and the respondent No.7 received back Rs.12,00,000/- from respondents No. 4 and 5, therefore, the agreement to sale dated 06/08/2002 has no force. Respondents No. 4 and 5 executed an agreement to sell the suit property in

27
92

favour of respondents No. 6 to 8 and from them appellants obtained an agreement to sell the said property, therefore, if no agreement to sale remains in favor of respondents No. 6 to 8, no right to purchase the suit property with the respondents No. 6 to 8 remains in favour of the appellants/plaintiffs.

6) Learned counsel for the appellants has placed reliance on **Ashok Kumar Sable Vs. Sevak Prasad Singh**, reported in **M.P. Weekly Notes 1997(1) (Short Note 123)**, **Moti Ram Vs. Khvali Ram and another**, reported in **AIR 1967, Allahabad 484**, **Balu Singh Vs. Devisingh**, reported in **M.P. Weekly Notes 1986 (Short Note 162)**, **Priya Thakral Vs. Amar Singh**, reported in **M.P. Weekly Notes 1988(II) (Short Note 125)**, **Salagram Natwarlal (M/s) Vs. M/s. Gendalal Madholal Seth**, reported in **M.P. Weekly Notes 1990 (II) (Short Note 192)**, **Kantilal Darda Vs. Mohanlal Surana**, reported in **M.P. Weekly Notes 1991 (1) (Short Note 145)** and **Mukesh Vs. Deonarayan**, reported in **AIR 1987 MP 85**, but, all these case laws are distinguishable on facts.

7) It is settled law that granting interim injunction is to lessen the risk of irreparable injury and injustice which cannot be compensated for money. Here, in the instant case, there appears no prima facie case in favour of the appellants/plaintiffs and also the principle of balance of convenience and irreparable loss does not lie in their favour, therefore, learned trial Court taking into consideration all the facts and after due consideration of all the documents, rejecting the application has not committed any error.



93

8) I am of the opinion that no interference is called for in the order passed by the trial Court, therefore, the appeal deserves to be dismissed summarily and is accordingly dismissed.

9) Learned trial Court shall decide the suit in accordance with law without being influenced by any of the observations made herein. Looking to the nature of the lis and execution of agreement so rapidly, it is directed that the lower Court should expedite disposal of the case early, preferably within six months from the date of receipt of copy of this order.

Sd/-

V.K. Shrivastava

Judge

17/10/2005

Raju